

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL

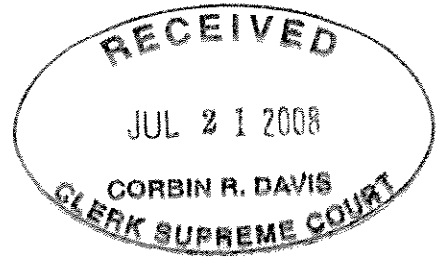


MIKE COX
ATTORNEY GENERAL

P.O. Box 30212
LANSING, MICHIGAN 48909

July 16, 2008

Honorable Clifford W. Taylor
Chief Justice
Michigan Supreme Court
Hall of Justice
Lansing, MI 48909



Dear Chief Justice Taylor:

Re: ADM File No. 2006-16
Proposed Amendment of Michigan Court Rules 6.302
and 6.310 to preclude judicial involvement in negotiating plea agreements

As the Attorney General, I serve as the State of Michigan's chief law enforcement official.¹ Michigan courts have observed that it is the function and duty of the Attorney General, and his designated assistants, to provide legal representation and advice to the State of Michigan and its hundreds of agencies, boards, commissions, officials, and employees.² I write to comment on the proposed amendment that would preclude judicial involvement in negotiating plea agreements and limit the ability of defendants to withdraw guilty pleas.

I support the amendment of rules 6.302 and 6.310 to preclude judicial involvement in negotiating plea agreements, which the staff comments notes "would make the rules consistent with the federal rules." While consistency with the federal rules alone does not justify the proposed change to Michigan's court rules, I believe that state-wide consistency in how pleas are taken is an appropriate consideration, and that uniform rules concerning pleas would further the interests of justice.

In plea negotiations, judicial involvement must be limited "to minimize the potential coercive effect on the defendant, to retain the function of the judge as a neutral arbiter, and to preserve the public perception of the judge as an impartial dispenser of justice."³ It has been the experience of my office that not all judges engage in plea negotiations, and of those judges who

¹ See MCL 14.28, 14.29, 14.32

² See, e.g., *Babcock v Hanselman*, 56 Mich 27, 28 (1885); *Jennings v State Veterinary Board*, 156 Mich 417 (1909); *Attorney General v PSC*, 243 Mich App 487, 504 (2000).

³ *People v Killebrew*, 416 Mich 189, 202 (1982).

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do engage in plea negotiations, there is no uniform consistency in how those plea negotiations are conducted. This discrepancy in judicial involvement – between counties and, indeed, sometimes within the same county – undercuts the public perception of the court as an impartial dispenser of justice. Moreover, excessive judicial involvement in plea negotiations blurs the separation of powers and encroaches on the authority and discretion of a prosecutor to resolve the criminal charges they have filed.

While some opponents of the proposed rule changes assert that precluding judicial involvement in plea negotiations will lead to fewer pleas and, in turn, clog the courts' dockets, the courts' primary role is not to coerce the parties into a plea agreement, but rather, to remain a detached and neutral official. If, for whatever reason the court is unable to follow the plea agreement negotiated by the parties, the proposed rule allows the judge to reject the negotiated sentence or sentencing range, inform the parties of the sentence it intends to impose, and provide the defendant the opportunity to affirm or withdraw the plea. Thus, the judge, although precluded from actively participating in plea negotiations, nevertheless retains the independence and discretion, as a neutral and detached official, to impose a sentence that he or she deems appropriate.

In sum, I believe that the proposed rules to limit judicial involvement in plea negotiations will strengthen the public perception of the judge as an impartial arbiter of justice and provide consistency and predictability for attorneys and their clients throughout the state.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael A. Cox", written in a cursive style.

Michael A. Cox

c: Corbin Davis